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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,152	04/08/2004	David Turner	005127.00211	6673

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EXAMINER

TOMPKINS, ALISSA JILL

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/820,152

Applicant(s)

TURNER, DAVID

Examiner

Alissa J. Tompkins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 4/08/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/08/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-12, 17-19, 21-25, 34-36, 38, 39, 40, 43-45, and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Yan (U.S. 6,131,202). Yan shows an article of headwear that is made out of multi-axially stretchable fabric that can stretch in a direction of a circumference of the crown providing an easy fit for the head of the wearer. The cap is comprised of a crown portion with a plurality of panels made out of an elastic cloth material as well as a visor board covered with a stretchable fabric, which is attached to the crown and expands in response to the stretching of the crown. The cap also comprises a strip including a plurality of perforations made out of a stretchable foam material (Figure 6, 26) that is covered by fabric and attached to the surface of the crown. Adjacent to the interior surface of the cap is a flap including first and second surfaces (Figure 5, 26 and 28), which is formed of an extension of the first elastic material/crown portion. The strip is located on the first surface of the flap (Figure 4) and the second surface is associated with a sweatband. The first surface of the flap faces away from the head while the second surface faces the head of the wearer (Figure 4-6).

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The flap is folded and stitched to the inside surface of the crown (Figure 4, 24, 30, 33) forming the headliner of the cap. The use of screen printing to adhere the strip to the crown of the cap is not given patentable weight in this matter because one of ordinary skill in the art could choose any form or adhesion or stitching to apply the strip to the cap.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 20, 28-31, 37, and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yan in view of Dodd (U.S. 6,052,825). Yan discloses the invention substantially as applied in claims 1-4, 6-12, 17-19, 21-25, 43-45, and 47 above.

However, Yan is missing a second elastic material made of silicon. Dodd discloses a watertight cap comprised of an adhesive seal attached to the margin of the cap (Figure 1, 4), which is made of a silicon material (Column 2, 8-11). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Dodd to modify Yan in order to provide a cap where the second elastic material is silicone providing a waterproof, lightweight, and flexible strip on the inside crown surface.

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Claims 13-16, 26, 27, 41, 42, and 48-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yan in view of Wang (U.S. 2003/0226193A1). Yan discloses the invention substantially as applied in claims 1-4, 6-12, 17-19, 21-25, 34-36, 38-40, 43-45, and 47 above. However, Yan is missing a visor board having L-shaped slits. Wang discloses a stretchable cap structure having two L-shaped slits located on the visor board of the cap (Figure 4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Wang to modify Yan in order to provide a cap having slits in the visor giving the visor the ability to conform, expand, and allow a greater movement of freedom for the wearer.

Claims 32 and 33 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Yan and Dodd and in further view of Wang. Yan and Dodd disclose the invention substantially as applied in claims 1-12, 17-25, 28-31, 34-40, and 43-47 above. However, Yan and Dodd are missing a visor board containing at least one L-shaped slit. Wang discloses a stretchable hat having at least one L-shaped slit located on the visor board of the cap. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Wang to modify Yan and Dodd in order to provide a stretchable cap having an L-shaped slit in the visor board allowing the visor to have more flexibility.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cho (U.S. 6,119,273) shows a free-size cap with the ability to

stretch in all directions. Park (U.S. 6,408,443) shows a reversible visor having a plurality of slits in the visor board. Calvo (U.S. 5,920,910) shows a sweatband for use in a cap having a crown portion.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa J. Tompkins whose telephone number is 571-272- 3425. The examiner can normally be reached on M-F 830-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 571-272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Alissa Tompkins
Patent Examiner
Art Unit 3765
October 31, 2005

AJT



KATHERINE MORAN
PRIMARY EXAMINER